



**Monthly Review n° 5/2005
May 2005**

EDITORIAL

Non relative inter-country adoption: Does The Hague Convention 1993 make it obligatory to co-operate with every receiving State or body that so requests? 

The spirit of The Hague Convention 1993 invites States of origin to collaborate with the number and type of partners in receiving States that best fit the needs of their children.

Amongst the greatest assets of *The Hague Convention of 1993 on the protection of children and co-operation* in respect of intercountry adoption are, as the name suggests, the promotion of the best interests and fundamental rights of children, and the creation of a co-operative system between States, through Central Authorities, competent authorities and adoption accredited bodies (art. 1).

- *The best interests of children:* The Hague Convention of 1993 refers notably, in its Preamble, to the UN Convention on the Rights of the Child, which provides that States have a particular duty to protect children deprived of parental care (art. 20 and 21). An important element in achieving this is *permanency planning*, that is to say the devising for every child in care a permanent and preferably family protective solution, including, in the last resort, inter-country adoption (see the Editorial of ISS/IRC Bulletin 66).

- *Co-operation between States:* the co-operative system created by The Hague Convention of 1993 builds into each specific case of adoption a *joint responsibility* of the State of origin and the receiving State (through their authorities and bodies) in order to ensure that both the letter and the spirit of the entire Convention be implemented, that is to say centred on children's needs and rights.

Therefore, States Parties to the Convention agree that if children from one State need inter-country adoption, and if this State co-operates with other States Parties (which may be considered a safeguard), then the adoption has to be carried out according to the requirements protecting children and the co-operative system provided by the Convention.

Co-operation shaped by the best interests of children

Co-operation between State Parties can thus only be shaped by the best interests of the children concerned. However, some authorities and accredited bodies (especially in receiving States) seem to use this concept of co-operation in an effort to convince States of origin that they have to entrust to them adoptable children for non relative inter-country adoption: supposedly, if both States are bound by The Hague Convention of 1993, States of origin would not be able to refuse offers of co-operation from receiving States. This allegation sometimes claims to be based on the traditional legal theory of treaties (the binding effect of treaties): should a State ratify or accede to a treaty, it commits itself to enter into relationships with the other States Parties. Some States of origin are thus reluctant to ratify or accede to the Convention, thinking that as States Parties, they would be obliged to co-operate with all other States

parties. However, this interpretation does not take into account the purpose of the Convention. *The best interests of children cannot be interpreted to mean that every State has an obligation to accept files from prospective adoptive parents from the (currently) 64 other States Parties.*

In particular, since the international situation makes it clear that the number of young and healthy adoptable children is dwindling in many countries and many inter-country adoptable children have special needs (older children, siblings, children with health problems ...; for example, see below the chapter Rights of children deprived of their family), *it may be more in the interests of these children for a State of origin to co-operate with a restricted number of receiving States, and preferably adoption accredited bodies (see Editorials in Monthly Reviews 70 and 71), which can propose files from prospective adoptive parents who precisely match the needs of the children (see also Editorial in Bulletin 65).*

Reasons to collaborate with a limited number of State Parties and bodies

Several reasons based on the best interests of children can justify such a choice. A limited number of partners contributes to enhancing the specialisation of foreign counterparts and to strengthening ties and thereby the expertise relating to particular children concerned. Furthermore, it prevents States of origin from being overwhelmed by a disproportionate number of sometimes unsuitable requests from foreign prospective adoptive parents, lessening their ability to focus on assessing the situation of children in care. In the best interests of children, a State of origin might also prefer to co-operate with States which have common linguistic, cultural or other specificities: this feeling of common characteristics can help the professionals to build closer co-operation, and the adopted children to integrate more harmoniously into their adoptive family and society and thereafter to revert to their roots. States of origin can also decide to work by choice with States which share values relating to child welfare: countries with compatible child welfare systems and similar professional and ethical standards for assessing the suitability and the preparation of prospective adoptive parents may indeed develop better and closer co-operation.

The view of the Permanent Bureau of The Hague Conference

Consulted on the issue raised by the present Editorial, the Permanent Bureau of The Hague Conference issued the following statement on 19 May 2005: "the fundamental point is that a State's obligations under the Convention should be viewed in the light of the principle of the child's best interests. *The Convention does not oblige a State to engage in any inter-country adoption arrangements where these are not seen to be in the best interests of the individual child. Considerations of children's best interests may lead to a preference by a country of origin for placements in particular receiving countries.* Moreover, limited capacity and scarce resources in the country of origin may also be a good reason for limiting the number of countries, or accredited bodies, with which a country of origin can realistically enter into effective, well-managed and properly supervised cooperative arrangements. *Indeed, attempting to deal with too many receiving countries, or too many accredited bodies, may constitute bad practice if its effect is to dilute to an unsatisfactory level the control which a country of origin must necessarily exercise over the inter-country adoption process.*

At the same time, *the more general obligation of co-operation under the Convention does require that Contracting States generally should deal with each other in an open and responsive manner.* This includes countries of origin being ready to explain when and why certain policies may have to be maintained. Equally, receiving countries should be sensitive to the difficulties that countries of origin may have in developing a well managed system of alternative child care."

The challenge

Of course a State Party to The Hague Convention 1993 should not refuse to co-operate with other States Parties or some of their adoption accredited bodies for motives that do not proceed from the best interests of children, such as financial interests. But The Hague Convention of 1993 fully entitles States of origin – and even in its spirit invites them – to co-operate with those States and bodies, and a limited number of them which best fit the children's needs. This should not be viewed by receiving States as just a problem but rather as *a challenge to work more and more closely with the States of origin and the prospective adoptive parents in order to adapt, as far as possible, the*

requests of the latter to the needs of the adoptable children (see also Editorial in Bulletin 67).

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[ssi.org/Resource_Centre/Tronc_DI/editoriatronc_di.html](http://www.iss-ssi.org/Resource_Centre/Tronc_DI/editoriatronc_di.html). More about The Hague Convention 1993: http://hcch.e-vision.nl/index_en.php?act=conventions.text&cid=69.

The IRC team